

COMMITTEE REPORT

MR. PRESIDENT:

The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Bill No. 220, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Delete the title and insert the following:
- 2 A BILL FOR AN ACT to amend the Indiana Code concerning trade
- 3 regulation.
- 4 Delete everything after the enacting clause and insert the following:
- 5 SECTION 1. IC 7.1-1-4 IS ADDED TO THE INDIANA CODE AS
- 6 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
- 7 1, 2001]:
- 8 **Chapter 4. Adult Cabarets**
- 9 **Sec. 1. This chapter applies only to an adult cabaret that holds**
- 10 **a license under this title.**
- 11 **Sec. 2. As used in this chapter, "adult cabaret" means an**
- 12 **establishment that features as a principal use of its business and**
- 13 **source of income an entertainer, a member of the wait staff, a**
- 14 **bartender, or any other employee who exposes to public view of the**
- 15 **patrons within the establishment, at any time:**
- 16 **(1) the bare female breast below a point immediately above**
- 17 **the top of the areola; or**
- 18 **(2) human genitals, pubic regions, or buttocks, even if**
- 19 **partially covered by opaque material or completely covered**
- 20 **by translucent material, including:**
- 21 **(A) swimsuits;**
- 22 **(B) lingerie; or**
- 23 **(C) latex covering.**
- 24 **The term includes an establishment that features entertainment of**
- 25 **an erotic nature, including exotic dancers, strippers, male or**
- 26 **female impersonators, or similar entertainers.**
- 27 **Sec. 3. As used in this chapter, "adult entertainment" means any**
- 28 **exhibition of a:**
- 29 **(1) live performance;**
- 30 **(2) display; or**

(3) dance;
that has, as a significant or substantial part of the performance,
any actual or simulated performance of specified sexual activities,
exhibition and viewing of specified anatomical areas, or removal
of articles of clothing or appearing unclothed during pantomime or
modeling.

Sec. 4. As used in this chapter, "employee" means an individual
who performs a service on the premises of an adult cabaret on a
full-time, part-time, or contract basis, whether or not the person is
denominated an employee, independent contractor, agent, or
otherwise, and whether or not the individual is paid a salary, wage,
or other compensation by the operator of the business. The term
does not include an individual exclusively on the premises for
repair or maintenance of the premises or equipment on the
premises, or for the delivery of goods to the premises.

Sec. 5. As used in this chapter, "entertainer" means an
individual who provides entertainment within an adult cabaret,
whether or not a fee is charged or accepted for entertainment and
whether or not entertainment is provided as an employee or
independent contractor.

Sec. 6. As used in this chapter, "operator" means any
individual, partnership, or corporation operating, conducting, or
maintaining an adult cabaret.

Sec. 7. As used in this chapter, "person" means an individual, a
partnership, a limited liability entity, a firm, a corporation, or an
association.

Sec. 8. As used in this chapter, "specified anatomical areas"
means:

- (1) less than completely and opaquely covered human:
 - (A) genitals;
 - (B) pubic regions;
 - (C) buttocks; and
 - (D) female breasts below a point immediately above the top
of the areola; and
- (2) human male genitals in a discernibly turgid state, even if
completely opaquely covered.

Sec. 9. As used in this chapter, "specified sexual activities"
means:

- (1) human genitals in a state of arousal;
- (2) acts of human masturbation, sexual intercourse, or deviate
sexual conduct; or
- (3) fondling or erotic touching of human genitals, pubic
regions, buttocks, or female breasts.

Sec. 10. (a) The public part of an adult cabaret may be open
only from noon to midnight.

(b) The public part of an adult cabaret shall be open to
inspection at all reasonable times by the commission.

(c) The operator shall maintain a register of all employees,
showing the:

- (1) name;

- (2) aliases used by the employee, including performance names and stage names;
- (3) home address;
- (4) age;
- (5) birth date;
- (6) sex;
- (7) height;
- (8) weight;
- (9) color of hair and eyes;
- (10) telephone number;
- (11) Social Security number;
- (12) driver's license number;
- (13) date of employment and termination; and
- (14) duties;

of each employee and other information as may be required by the commission. The information concerning an employee must be maintained in the register on the premises for three (3) years after the employee's termination. Information in the register of employees is not public information, and the operator shall take measures to maintain the privacy of the information.

(d) At all reasonable times, the operator shall make the register of employees available for inspection by the commission immediately upon demand.

(e) An act or omission by an employee constituting a violation of this chapter is considered the act or omission of the operator if the act or omission occurs either with the authorization, knowledge, or approval of the operator, or as a result of the operator's negligent failure to supervise the employee's conduct. The operator is punishable for an act or omission in the same manner as if the operator committed the act or caused the omission.

(f) An operator is responsible for the conduct of all employees while the employees are on the licensed premises, and any act or omission of any employee constituting a violation of this chapter is considered the act or omission of the operator for purposes of determining whether the operator's permit may be revoked, suspended, or renewed.

(g) An operator of an adult cabaret shall neither allow a minor to frequent the adult cabaret nor allow a minor to view adult entertainment at the adult cabaret.

(h) Every adult cabaret must be physically arranged so that the interior portions of the booths, cubicles, rooms, or stalls where adult entertainment is provided are visible from the common area of the premises. Visibility may not be blocked or obscured by doors, curtains, partitions, drapes, or any other obstruction.

(i) The operator of an adult cabaret shall provide that any room or area used to view live entertainment is readily accessible at all times and is continuously open to view in its entirety.

(j) A sign must be conspicuously displayed in the common area of the premises and must read as follows:

"This Adult Cabaret is Regulated by IC 7.1-1-4. Entertainers and employees are:

- (1) Not permitted to engage in any type of sexual conduct.**
- (2) Not permitted to expose their sex organs.**
- (3) Not permitted to demand or collect all or any part of a fee for entertainment before its completion.**
- (4) Not permitted to appear in a state of full nudity."**

(k) Not less than one (1) time per month, the operator shall permit the commission to inspect the entire licensed premises of the adult cabaret.

Sec. 11. (a) An operator, entertainer, or employee of an adult cabaret shall not permit:

- (1) sexual intercourse;**
- (2) oral copulation;**
- (3) anal copulation; or**
- (4) any other contact stimulation of the genitalia;**

to be performed. This includes the extension of an offer to perform, performance on a patron, performance by employees or patrons, or the allowance of a patron to perform.

(b) An operator, entertainer, or employee of an adult cabaret shall not encourage or permit any person upon the premises to touch, caress, or fondle the:

- (1) breasts;**
- (2) buttocks;**
- (3) anus; or**
- (4) genitals;**

of any operator, entertainer, or employee.

(c) An entertainer, employee, or customer shall not be permitted to have any physical contact with any other entertainer, employee, or customer on the premises during any performance.

(d) A performance by an entertainer or employee may only occur upon a stage that is:

- (1) at least eighteen (18) inches above the immediate floor level; and**
- (2) removed at least six (6) feet from the next nearest entertainer, employee, and customer.**

(e) An employee or entertainer, while on the premises of an adult cabaret, shall not:

- (1) engage in sexual intercourse;**
- (2) engage in deviant sexual conduct;**
- (3) appear in a state of nudity;**
- (4) fondle the employee's or entertainer's own genitals; or**
- (5) fondle the genitals of another.**

(f) An adult cabaret shall not advertise that the license holder offers sexual stimulation, other than visual stimulation, or sexual gratification.

(g) An adult cabaret shall not display a sign or advertisement in public view that:

- (1) contains a source of illumination;**
- (2) uses a picture, the silhouette, or any part of a silhouette of**

the:

- (A) bare female breast;
- (B) human genitals;
- (C) human pubic regions; or
- (D) human buttocks; or
- (3) exceeds the size and height restrictions determined by the commission.

Sec. 12. The commission may adopt rules under IC 4-22-2 and procedures to administer this chapter.

SECTION 2. IC 24-4-13 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]:

Chapter 13. Adult Oriented Establishment Licenses

Sec. 1. As used in this chapter, "adult cabaret" means an establishment that features as a principal use of its business and source of income an entertainer, a member of the wait staff, a bartender, or any other employee who exposes to public view of the patrons within the establishment, at any time:

- (1) the bare female breast below a point immediately above the top of the areola; or
- (2) human genitals, pubic regions, or buttocks, even if partially covered by opaque material or completely covered by translucent material, including:
 - (A) swimsuits;
 - (B) lingerie; or
 - (C) latex covering.

The term includes an establishment that features entertainment of an erotic nature, including exotic dancers, strippers, male or female impersonators, or similar entertainers.

Sec. 2. As used in this chapter, "adult entertainment" means any exhibition of an adult oriented:

- (1) motion picture that is found obscene under IC 35-49-2-1;
- (2) live performance;
- (3) display; or
- (4) dance;

that has, as a significant or substantial part of the performance, any actual or simulated performance of specified sexual activities, exhibition and viewing of specified anatomical areas, removal of articles of clothing or appearing unclothed during pantomime or modeling, or any other personal service offered to customers.

Sec. 3. As used in this chapter, "adult oriented establishment" means:

- (1) a sexual encounter center; or
- (2) an adult cabaret that does not hold a license or permit under IC 7.1.

Sec. 4. As used in this chapter, "employee" means a person who performs any service on the premises of an adult oriented establishment on a full-time, part-time, or contract basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise, and whether or not the person is

1 paid a salary, wage, or other compensation by the operator of the
 2 business. The term does not include a person exclusively on the
 3 premises for repair or maintenance of the premises or equipment
 4 on the premises, or for the delivery of goods to the premises.

5 Sec. 5. As used in this chapter, "entertainer" means a person
 6 who provides entertainment within an adult oriented
 7 establishment, whether or not a fee is charged or accepted for
 8 entertainment and whether or not entertainment is provided as an
 9 employee or independent contractor.

10 Sec. 6. As used in this chapter, "law enforcement official" means
 11 the law enforcement agency responsible for enforcement of this
 12 chapter in a political subdivision as selected by the executive (as
 13 defined in IC 36-1-2-5) of the political subdivision having
 14 jurisdiction over the adult entertainment.

15 Sec. 7. As used in this chapter, "licensing authority" or
 16 "authority" means the licensing authority designated by the
 17 executive (as defined in IC 36-1-2-5) of the political subdivision
 18 having jurisdiction over the adult entertainment.

19 Sec. 8. As used in this chapter, "nudity" means the showing:

- 20 (1) of the human male or female genitals or pubic area with
- 21 less than a fully opaque covering;
- 22 (2) of the female breast with less than a fully opaque covering
- 23 of any part of the nipple; or
- 24 (3) of the covered male genitals in a discernibly turgid state.

25 Sec. 9. As used in this chapter, "operator" means any person,
 26 partnership, or corporation operating, conducting, or maintaining
 27 an adult oriented establishment.

28 Sec. 10. As used in this chapter, "person" means an individual,
 29 a partnership, a limited liability entity, a firm, a corporation, or an
 30 association.

31 Sec. 11. As used in this chapter, "sexual conduct" means the
 32 engaging in or the commission of an act of sexual intercourse,
 33 oral-genital contact, or the touching of the sexual organs, pubic
 34 region, or buttocks of a person for the purpose of arousing or
 35 gratifying the sexual desire of another person.

36 Sec. 12. As used in this chapter, "sexual encounter center"
 37 means a business or commercial enterprise that, as its primary
 38 business purpose, offers for any form of consideration a location
 39 for sexual conduct on the premises by individuals who have paid a
 40 fee for membership or for participation.

41 Sec. 13. As used in this chapter, "specified anatomical areas"
 42 means:

- 43 (1) less than completely and opaquely covered:
- 44 (A) human genitals;
- 45 (B) pubic regions;
- 46 (C) buttocks; and
- 47 (D) female breasts below a point immediately above the top
- 48 of the areola; and
- 49 (2) human male genitals in a discernibly turgid state, even if
- 50 completely opaquely covered.

1 Sec. 14. As used in this chapter, "specified criminal act" and
2 "specified criminal activities" refer to the following criminal
3 offenses:

- 4 (1) Rape under IC 35-42-4-1.
- 5 (2) Criminal deviate conduct under IC 35-42-4-2.
- 6 (3) Child molesting under IC 35-42-4-3.
- 7 (4) Child exploitation under IC 35-42-4-4.
- 8 (5) Possession of child pornography under IC 35-42-4-4.
- 9 (6) Vicarious sexual gratification under IC 35-42-4-5.
- 10 (7) Child solicitation under IC 35-42-4-6.
- 11 (8) Child seduction under IC 35-42-4-7.
- 12 (9) Sexual battery under IC 35-42-4-8.
- 13 (10) Sexual misconduct with a minor under IC 35-42-4-9.

14 Sec. 15. As used in this chapter, "specified services" means
15 private dances, private modeling, and any other live adult
16 entertainment.

17 Sec. 16. As used in this chapter, "specified sexual activities"
18 means:

- 19 (1) human genitals in a state of arousal;
- 20 (2) acts of human masturbation, sexual intercourse, or deviate
21 sexual conduct; or
- 22 (3) fondling or erotic touching of human genitals, pubic
23 regions, buttocks, or female breasts.

24 Sec. 17. (a) An adult oriented establishment must be licensed by
25 a licensing authority.

26 (b) A license may be issued only for one (1) adult oriented
27 establishment located at a fixed and certain place. A person who
28 operates more than one (1) adult oriented establishment must have
29 a license for each adult oriented establishment.

30 (c) A building, premises, structure, or other facility that
31 contains an adult oriented establishment may not contain any other
32 kind of adult oriented establishment.

33 (d) A license or interest in a license may not be transferred.

34 (e) An entertainer, employee, or operator shall not knowingly:

- 35 (1) work in or about; or
- 36 (2) perform any service directly related to or at the request of
37 the operation of;

38 an unlicensed adult oriented establishment.

39 (f) A license may not be issued by the authority unless the
40 applicant certifies, by proof satisfactory to the authority, that the
41 applicant has satisfied the rules, regulations, and provisions of the
42 applicable zoning requirements of the political subdivision.

43 Sec. 18. (a) A person who desires a license shall make
44 application to the licensing authority. A copy of the application
45 shall be distributed promptly to the local law enforcement official.

46 (b) The application for a license must be on a form provided by
47 the authority. An applicant for a license shall furnish the following
48 information under oath:

- 49 (1) Name, including all aliases, and address of the applicant.
- 50 (2) Written proof that all individuals employed by the

applicant are at least eighteen (18) years of age.

(3) The business, occupation, or employment of the applicant for five (5) years immediately preceding the date of the application.

(4) The adult oriented establishment or similar business license history of the applicant. The applicant shall include whether the applicant, in previously operating in any county, city, or state under a license, has had the license revoked or suspended, the reason for revocation or suspension, and the business activity or occupation subject to the suspension or revocation.

(5) Any conviction for a specified criminal act.

(6) The address of the adult oriented establishment to be operated by the applicant.

(7) If the applicant is:

(A) a corporation, the application shall specify:

(i) the name, address, and telephone number of the corporation;

(ii) the date and the state of incorporation;

(iii) the name and address of the registered agent for service of process of the corporation;

(iv) the names and addresses of the officers and directors of the corporation; and

(v) the names and addresses of any person holding at least fifty percent (50%) of the stock of the corporation;

(B) a partnership, the application shall specify:

(i) the name and address of the partnership; and

(ii) the name and address of all general partners of the partnership; or

(C) a limited partnership, the application shall specify the name and address of all general partners who have a controlling interest in the partnership.

(8) A statement by the applicant that the applicant is familiar with all laws and regulations governing the operation of an adult oriented establishment and is in compliance with them.

(c) Not later than ten (10) days after receiving the results of the investigation conducted by the authority or by a local law enforcement official for the authority, the authority shall notify the applicant that the application is granted, denied, or held for further investigation. Additional investigation may not exceed an additional thirty (30) days unless otherwise agreed to by the applicant. Upon the conclusion of the additional investigation, the authority shall advise the applicant in writing whether the application is granted or denied.

(d) Failure or refusal of the applicant to give any information relevant to the investigation of the application, the applicant's refusal or failure to appear at any reasonable time and place for examination under oath regarding the application, or the applicant's refusal to submit to or cooperate with any investigation required by this chapter constitutes an admission by the applicant

that the applicant is ineligible for a license and is grounds for denial of the license by the authority.

Sec. 19. (a) To receive a license to operate an adult oriented establishment, an applicant must meet the following standards:

(1) If the applicant is an individual, the applicant:

(A) must be at least eighteen (18) years of age;

(B) must not have had a license revoked within five (5) years immediately preceding the date of the application;

(C) must not have been convicted of any violation of this chapter within five (5) years immediately preceding the date of the application; and

(D) must not have been convicted of a specified criminal act for which:

(i) less than two (2) years have elapsed since the date of conviction if the conviction is for a misdemeanor offense;

(ii) less than five (5) years have elapsed since the date of conviction if the conviction is for a felony offense; or

(iii) less than five (5) years have elapsed since the date of conviction for two (2) or more misdemeanor offenses occurring within any twelve (12) month period.

The fact that a conviction is being appealed has no effect on disqualification of the applicant.

(2) If the applicant is a corporation:

(A) all officers, directors, and stockholders required to be named under this chapter must be at least eighteen (18) years of age;

(B) an officer, director, and stockholder required to be named under this chapter may not have had an adult oriented establishment license revoked within five (5) years immediately preceding the date of the application;

(C) an officer, director, or stockholder required to be named under this chapter may not have a conviction for a violation of this chapter within five (5) years immediately preceding the date of the application; and

(D) the applicant or officer, director, or stockholder required to be named by this chapter may not have a conviction for a specified criminal act for which:

(i) less than two (2) years have elapsed since the date of conviction if the conviction is for a misdemeanor offense;

(ii) less than five (5) years have elapsed since the date of conviction if the conviction is for a felony offense; or

(iii) less than five (5) years have elapsed since the date of conviction for two (2) or more misdemeanor offenses occurring within any twelve (12) month period.

The fact that a conviction is being appealed has no effect on disqualification of the applicant.

(3) If the applicant is a partnership, joint venture, or any other type of organization where two (2) or more persons have a financial interest:

(A) all persons having a financial interest in the

partnership, joint venture, or other type of organization must be at least eighteen (18) years of age;

(B) all persons having a financial interest in the partnership, joint venture, or other type of organization may not have had a license revoked within five (5) years immediately preceding the date of the application;

(C) an applicant or person having a financial interest in the partnership, joint venture, or other type of organization may not have a conviction for a violation of this chapter within five (5) years immediately preceding the date of the application; and

(D) the applicant or any person having a financial interest required to be disclosed may not have a conviction for a specified criminal act for which:

(i) less than two (2) years have elapsed since the date of conviction if the conviction is for a misdemeanor offense;

(ii) less than five (5) years have elapsed since the date of conviction if the conviction is for a felony offense; or

(iii) less than five (5) years have elapsed since the date of conviction for two (2) or more misdemeanor offenses occurring within any twelve (12) month period.

The fact that a conviction is being appealed shall have no effect on disqualification of the applicant.

(b) A license may not be issued unless the authority or law enforcement official has investigated the applicant's qualifications to be licensed. The results of that investigation shall be filed in writing with the authority not later than twenty (20) days after the date of the application.

(c) An applicant who has been convicted of specified criminal activities may not be denied a license based on those convictions once the period required in this section has elapsed.

Sec. 20. (a) To provide proper administration of this chapter, the authority, its authorized representative, or local law enforcement may conduct investigations of persons engaged in the operation of any adult oriented establishment and inspect the license of the operators and establishment for compliance.

(b) Refusal of an operation or establishment to permit inspections is grounds for revocation of a license, suspension of a license, or refusal to issue a license under this chapter.

(c) Not later than ten (10) days after receiving the results of the investigation, the authority shall notify the applicant that the application is granted, denied, or held for further investigation. Such additional investigation shall not exceed an additional thirty (30) days, unless otherwise agreed to by the applicant. Upon the conclusion of the additional investigation, the authority shall advise the applicant in writing whether the application is granted or denied.

(d) If an additional investigation is held, upon the expiration of the thirtieth day, the applicant may begin operating the business for which the license is sought, unless or until the authority or its

1 authorized representative notifies the applicant of a denial of the
2 application and states the reasons for that denial.

3 **Sec. 21. (a) The authority may enter into any state court having**
4 **proper jurisdiction to:**

5 (1) seek an injunction against an operator or adult oriented
6 establishment not in compliance with this chapter; and

7 (2) enforce this chapter.

8 (b) Any violation of an injunction obtained under this section
9 constitutes contempt with a fine of fifty dollars (\$50).

10 (c) Each day in contempt of an injunction is considered a
11 separate offense.

12 **Sec. 22. (a) The authority shall revoke, suspend, or annul a**
13 **license for any of the following reasons:**

14 (1) Discovery that false or misleading information or data
15 were given on any application or that material facts were
16 omitted from any application.

17 (2) The operator or entertainer or any employee of the
18 operator violates this chapter or any rule adopted by the
19 authority. However, in the case of a first offense by an
20 operator where the conduct was solely that of an employee,
21 the penalty shall not exceed a license suspension of thirty (30)
22 days if the authority finds that the operator had no actual or
23 constructive knowledge of the violation and could not, by the
24 exercise of due diligence, have had actual or constructive
25 knowledge.

26 (3) The operator becomes ineligible to obtain a license.

27 (4) A cost or fee required to be paid by this chapter is not
28 paid.

29 (5) An alcoholic beverage is served or consumed on the
30 premises of an adult oriented establishment that is not
31 licensed by the Indiana alcoholic beverage commission.

32 (6) An operator employs an employee who does not have a
33 permit or provides space on the premises, whether by lease or
34 otherwise, to an independent contractor who performs or
35 works as an entertainer without a permit.

36 (7) An operator, employee, or entertainer sells, furnishes,
37 gives, or displays or causes to be sold, furnished, given, or
38 displayed to any minor any adult oriented entertainment or
39 adult oriented material.

40 (8) An operator, employee, or entertainer denies access of law
41 enforcement personnel to any portion of the licensed premises
42 where adult oriented entertainment is permitted or to any
43 portion of the licensed premises where adult oriented material
44 is displayed or sold.

45 (9) An operator fails to maintain the licensed premises in
46 compliance with the regulations of the state department of
47 health.

48 (10) An operator, employee, or entertainer is convicted of a
49 specified criminal act, if the violation occurred on the licensed
50 premises.

1 (b) Before revoking or suspending a license or permit, the
 2 authority shall give the license holder or permit holder not less
 3 than ten (10) and not more than twenty (20) days written notice of
 4 the charges against the license holder or permit holder and of the
 5 revocation of the license or permit, or of the period the license or
 6 permit is to be suspended. The notice must advise the license holder
 7 or permit holder of the license holder's or permit holder's right to
 8 request a hearing before the authority. If the license holder or
 9 permit holder does not request in writing a hearing before the
 10 authority within the time stated in the notice, the suspension or
 11 revocation is effective beginning the date stated in the notice.

12 (c) If the license holder or permit holder desires to request a
 13 hearing before the authority to contest the suspension or
 14 revocation, the request must be made in writing to the authority
 15 not later than ten (10) days after the license holder's or permit
 16 holder's receipt of the notification from the authority. If the license
 17 holder or permit holder timely requests a hearing, the effective
 18 date of a suspension or hearing is stayed pending the final outcome
 19 of judicial proceedings to determine whether the license or permit
 20 has been properly revoked or suspended under the law.

21 (d) If the license holder or permit holder timely requests a
 22 hearing, a public hearing must be held not later than fifteen (15)
 23 days after the authority receives the request. The hearing must be
 24 before the authority and must allow the license holder or permit
 25 holder to present evidence. The authority shall hear evidence
 26 concerning the basis for the suspension or revocation and shall
 27 affirm or reverse the suspension or revocation at the conclusion of
 28 the hearing.

29 (e) The hearing must be concluded not later than twenty-two
 30 (22) days after the license holder's or permit holder's receipt of the
 31 notification of the suspension or revocation, unless an extension
 32 beyond that time is requested by the license holder or permit
 33 holder and granted by the authority.

34 (f) If the authority affirms the suspension or revocation, the
 35 attorney for the authority, or the prosecuting attorney, shall
 36 institute suit for declaratory judgment in a court of record in the
 37 county not later than five (5) days after the date of an affirmation,
 38 seeking an immediate judicial determination of whether the license
 39 or permit has been properly revoked or suspended under the law.

40 (g) An operator whose license is revoked is not eligible to receive
 41 a license for five (5) years after the date of revocation.

42 (h) The applicant is entitled to prompt judicial review of a
 43 license suspension or revocation.

44 (i) The authority has the burden of showing that a revocation or
 45 suspension of a license under this section is not arbitrary or
 46 capricious.

47 Sec. 23. (a) If an application for the issuance of a license or the
 48 renewal of a license is denied, the authority shall notify the
 49 applicant in writing of the reasons for such action.

50 (b) Notice of denial of an application must advise the applicant

1 of the applicant's right to request a hearing before the authority.
 2 If the applicant desires to request a hearing before the authority to
 3 contest the denial of an application, the request must be made in
 4 writing to the authority not later than ten (10) days after the
 5 applicant's receipt of the notification of the denial of the
 6 application. If the applicant timely requests a hearing, a public
 7 hearing shall be held not later than fifteen (15) days after the
 8 authority's receipt of a request. The hearing must be held before
 9 the authority. At that time the applicant may present evidence as
 10 to why the application should not be denied. The authority shall
 11 hear evidence concerning the basis for denial of the application and
 12 shall affirm or reverse the denial of an application at the
 13 conclusion of the hearing. A hearing shall be concluded not later
 14 than twenty-two (22) days after the applicant's receipt of
 15 notification of denial of an application, unless an extension beyond
 16 that time is requested by the applicant and granted by the
 17 authority.

18 (c) If the authority affirms the denial of an application, not later
 19 than five (5) days after the date of a denial, the county attorney or
 20 the prosecuting attorney shall institute suit for declaratory
 21 judgment in a court of record seeking an immediate judicial
 22 determination of whether the application has been properly denied
 23 under the law.

24 (d) The applicant is entitled to prompt judicial review for the
 25 denial of an application for a license or renewal of a license.

26 (e) The authority has the burden of showing that a denial of a
 27 license under this section is not arbitrary or capricious.

28 Sec. 24. (a) A license issued under this chapter is valid for one
 29 (1) year after the date of issuance, unless revoked before
 30 expiration, and must be renewed before operation is allowed in the
 31 following year.

32 (b) Each original application and renewal application shall be
 33 accompanied by a fee of two hundred fifty dollars (\$250).

34 (c) An operator desiring to renew a license shall make
 35 application to the authority. The application for renewal must be
 36 filed not later than sixty (60) days before the license expires. The
 37 application for renewal shall be filed in triplicate with and dated
 38 by the authority. A copy of the application for renewal shall be
 39 distributed promptly by the authority to the local law enforcement
 40 official and to the state department of health. The application for
 41 renewal must contain information and data, given under oath or
 42 affirmation, as may be required by the authority, but not less than
 43 the information contained in the original application.

44 (d) In addition to the renewal fee, a late penalty of fifty dollars
 45 (\$50) per day shall be assessed against an applicant who files for a
 46 renewal less than thirty (30) days before the license expires.

47 (e) If the local law enforcement official is aware of any
 48 information bearing on the operator's qualifications, the
 49 information must be filed in writing with the authority not later
 50 than ten (10) days after the date of the application for renewal.

1 (f) If the application is denied, one-half (1/2) of the fee shall be
2 returned.

3 Sec. 25. (a) The public part of an adult oriented establishment
4 may be open from noon to midnight.

5 (b) The public portion of an adult oriented establishment shall
6 be open to inspection at all reasonable times by the local law
7 enforcement officials, the authority, and the state board of health.

8 (c) The operator shall maintain a register of all employees,
9 showing the:

10 (1) name;

11 (2) aliases used by the employee, including performance
12 names and stage names;

13 (3) home address;

14 (4) age;

15 (5) birth date;

16 (6) sex;

17 (7) height;

18 (8) weight;

19 (9) color of hair and eyes;

20 (10) telephone number;

21 (11) Social Security number;

22 (12) driver's license number;

23 (13) date of employment and termination; and

24 (14) duties;

25 of each employee and other information as may be required by the
26 authority. The information concerning an employee must be
27 maintained in the register on the premises for three (3) years after
28 termination of the employee.

29 (d) At all reasonable times, the operator shall make the register
30 of employees available immediately for inspection by the authority,
31 the local law enforcement official, and the state department of
32 health upon demand.

33 (e) An act or omission by an employee constituting a violation
34 of this chapter is considered the act or omission of the operator if
35 the act or omission occurs either with the authorization,
36 knowledge, or approval of the operator, or as a result of the
37 operator's negligent failure to supervise the employee's conduct.
38 The operator is punishable for an act or omission in the same
39 manner as if the operator committed the act or caused the
40 omission.

41 (f) An operator is responsible for the conduct of all employees
42 while the employees are on the licensed premises, and any act or
43 omission of any employee constituting a violation of this chapter is
44 considered the act or omission of the operator for purposes of
45 determining whether the operator's license may be revoked,
46 suspended, or renewed.

47 (g) An employee of an adult oriented establishment shall neither
48 allow a minor to loiter around or to frequent the adult oriented
49 establishment nor allow a minor to view adult entertainment.

50 (h) Every adult oriented establishment must be physically

1 arranged so that the interior parts of the booths, cubicles, rooms,
 2 or stalls where adult entertainment is provided are visible from the
 3 common area of the premises. Visibility may not be blocked or
 4 obscured by doors, curtains, partitions, drapes, or any other
 5 obstruction.

6 (i) The operator of an adult oriented establishment shall provide
 7 that any room or area used for the purpose of viewing adult
 8 oriented motion pictures or other types of live adult entertainment
 9 is readily accessible at all times and is continuously open to view in
 10 its entirety.

11 (j) The license issued under this chapter shall be conspicuously
 12 displayed in the common area of the premises at all times.

13 (k) A sign must be conspicuously displayed in the common area
 14 of the premises and must read as follows:

15 "This Adult Oriented Establishment Is Regulated by
 16 IC 24-4-13. Employees are:

17 (1) Not permitted to engage in any type of sexual conduct.

18 (2) Not permitted to expose their sex organs.

19 (3) Not permitted to appear in a state of full nudity."

20 (l) The license shall be kept by an employee so that it is readily
 21 available for display immediately upon request of a customer, the
 22 authority, the local law enforcement official, the state board of
 23 health, or any person designated by the authority.

24 (m) Not less than one (1) time per month the operator shall
 25 permit the state department of health to inspect the adult oriented
 26 establishment. The state department of health shall prepare a
 27 report for the authority of all findings.

28 Sec. 26. (a) An operator, entertainer, or employee of an adult
 29 oriented establishment shall not permit:

30 (1) sexual intercourse;

31 (2) oral copulation;

32 (3) anal copulation; or

33 (4) any other contact stimulation of the genitalia;

34 to be performed. This includes the extension of an offer to perform,
 35 performance on a patron, performance by employees or patrons,
 36 or the allowance of a patron to perform.

37 (b) An operator, entertainer, or employee of an adult oriented
 38 establishment shall not encourage or permit any person upon the
 39 premises to touch, caress, or fondle the:

40 (1) breasts;

41 (2) buttocks;

42 (3) anus; or

43 (4) genitals;

44 of any operator, entertainer, or employee.

45 (c) An entertainer, employee, or customer shall not be permitted
 46 to have any physical contact with any other entertainer, employee,
 47 or customer on the premises during any performance.

48 (d) A performance by an entertainer, employee, or customer
 49 may only occur upon a stage that is:

50 (1) at least eighteen (18) inches above the immediate floor

1 level; and

2 (2) removed at least six (6) feet from the next nearest
3 entertainer, employee, and customer.

4 (e) An employee or entertainer, while on the premises of an
5 adult oriented establishment, shall not:

6 (1) engage in sexual intercourse;

7 (2) engage in deviant sexual conduct;

8 (3) appear in a state of nudity;

9 (4) fondle the employee's or entertainer's own genitals; or

10 (5) fondle the genitals of another.

11 (f) A license holder shall not advertise that the license holder
12 offers sexual stimulation, other than visual stimulation, or sexual
13 gratification.

14 (g) A license holder shall not display a sign or advertisement in
15 public view that:

16 (1) contains a source of illumination;

17 (2) uses a picture, the silhouette, or any part of a silhouette of
18 the:

19 (A) bare female breast;

20 (B) human genitals;

21 (C) human pubic region; or

22 (D) human buttocks; or

23 (3) exceeds the size and height restrictions determined by the
24 authority.

25 Sec. 27. (a) A person may not be an entertainer or employee in
26 an adult oriented establishment without a valid permit issued by
27 the authority.

28 (b) A person desiring to secure a permit shall make application
29 to the authority. The application shall be filed in triplicate with and
30 dated by the authority. A copy of the application shall be
31 distributed promptly by the authority to the local law enforcement
32 official and the state department of health.

33 (c) The application for a permit shall be upon a form provided
34 by the authority.

35 (d) An applicant for a permit shall furnish the following
36 information under oath:

37 (1) name;

38 (2) aliases used by the employee, including performance
39 names and stage names;

40 (3) home address;

41 (4) written proof that the applicant is at least eighteen (18)
42 years of age;

43 (5) birth date;

44 (6) sex;

45 (7) height;

46 (8) weight;

47 (9) color of hair and eyes;

48 (10) telephone number;

49 (11) Social Security number;

50 (12) driver's license number;

(13) the adult oriented establishment or similar business permit history of the applicant, including whether the person, in previously operating in any city or state under a permit, has had the permit revoked or suspended, the reason for the revocation or suspension of the permit, and the business activity or occupation subject to the suspension or revocation; and

(14) any conviction for a specified criminal act.

The applicant shall also furnish two (2) color passport photographs at least two (2) inches by two (2) inches of the applicant and provide a statement by the applicant that the applicant is familiar with the provisions of this chapter and is in compliance with them.

(e) Not later than ten (10) days after receiving the results of the investigation conducted by the authority or the local law enforcement official, the authority shall notify the applicant that the applicant's application is granted, denied, or held for further investigation. An additional investigation shall not exceed an additional thirty (30) days unless otherwise agreed to by the applicant. Upon the conclusion of additional investigations, the authority shall advise the applicant in writing whether the application is granted or denied.

(f) If an additional investigation is held, upon the expiration of the thirtieth day, the applicant shall be permitted to begin operating the business for which the license is sought, unless or until the authority or its authorized representative notifies the applicant of a denial of the application and states the reasons for that denial.

(g) Failure or refusal of the applicant to give any information relevant to the investigation of the application, the applicant's refusal or failure to appear at any reasonable time and place for examination under oath regarding the application, the applicant's refusal to submit to or cooperate with any investigation required by this chapter constitutes an admission by the applicant that the applicant is ineligible for a permit and is grounds for denial of the permit by the authority.

Sec. 28. (a) A permit issued under this chapter is valid for one (1) year from the date of issuance, unless revoked before expiration, and must be renewed before an entertainer is allowed to provide entertainment in an adult oriented establishment in the following calendar year.

(b) Each original permit application and renewal application shall be accompanied by a fee of seventy-five dollars (\$75).

(c) A person desiring to renew a permit shall make application to the authority. The application for renewal must be filed not later than thirty (30) days before the permit expires. The application for renewal shall be filed in triplicate with and dated by the authority. A copy of the application for renewal shall be distributed promptly by the authority to the local law enforcement official and to the state department of health. The application for renewal must contain information and data, given under oath or affirmation, as

1 may be required by the authority, but not less than the information
2 contained in the original application.

3 (d) In addition to the renewal fee, a late penalty of five dollars
4 (\$5) shall be assessed against the applicant who files for renewal
5 less than thirty (30) days before the license expires.

6 (e) If the application is denied, one-half (1/2) of the fee shall be
7 returned.

8 (f) If the local law enforcement official is aware of any
9 information bearing on the entertainer's qualifications, that
10 information shall be filed in writing with the authority not later
11 than ten (10) days after the date of the application for renewal.

12 (g) An application for renewal of a permit shall be handled,
13 investigated, and approved or denied within the same periods as
14 those established for original permit application.

15 (h) If a permit renewal application is denied, the applicant has
16 all rights of appeal to the authority as set forth for a license issued
17 under this chapter.

18 **Sec. 29. (a) To receive a permit as an entertainer or employee,**
19 **an applicant must meet the following standards:**

20 (1) The applicant must be at least eighteen (18) years of age.

21 (2) The applicant shall not have had a permit revoked within
22 two (2) years immediately preceding the date of the
23 application.

24 (3) The applicant shall not have been convicted of a specified
25 criminal act for which:

26 (A) less than two (2) years have elapsed since the date of
27 conviction if the conviction is for a misdemeanor offense;

28 (B) less than five (5) years have elapsed since the date of
29 conviction if the conviction is for a felony offense; or

30 (C) less than five (5) years have elapsed since the date of
31 conviction for two (2) or more misdemeanor offenses
32 occurring within any twelve (12) month period.

33 The fact that a conviction is being appealed has no effect on
34 disqualification of the applicant.

35 (b) An applicant who has been convicted of specified criminal
36 activities may not be denied a permit based on those convictions
37 once the period required in subsection (a)(3) has elapsed.

38 (c) A permit may not be issued until the authority or the local
39 law enforcement official has investigated the applicant's
40 qualifications to receive a permit. The results of that investigation
41 shall be filed in writing with the authority not later than thirty (30)
42 days after the date of the application.

43 **Sec. 30. (a) An operator who violates an adult entertainment**
44 **license provision of this chapter shall pay a violation fee of one**
45 **thousand dollars (\$1,000) per violation per day of the violation.**

46 (b) An operator who violates an adult oriented establishment
47 license provision of this chapter five (5) times in one (1) year shall
48 have the license revoked. An operator whose license is revoked may
49 not reapply for a license for five (5) years.

50 (c) Each violation of this chapter is a separate offense, and any

1 violation continuing more than one (1) hour shall be considered a
2 separate offense for each hour of violation.

3 Sec. 31. (a) A person who violates an adult oriented
4 establishment permit provision of this chapter shall pay a violation
5 fee of one hundred fifty dollars (\$150) per violation per day of the
6 violation.

7 (b) A person who violates an adult oriented establishment
8 permit provision of this chapter five (5) times in one (1) year shall
9 have the permit revoked. A person whose permit is revoked may
10 not reapply for a permit for five (5) years.

11 (c) Each violation of this chapter is a separate offense, and any
12 violation continuing more than one (1) hour shall be considered a
13 separate offense for each hour of violation.

14 Sec. 32. (a) Fees collected for licenses under section 24 of this
15 chapter and penalty fees collected under section 30 of this chapter
16 shall be divided as follows:

17 (1) Thirty-three and thirty-three hundredths percent
18 (33.33%) to the authority having jurisdiction over the adult
19 entertainment.

20 (2) Thirty-three and thirty-four hundredths percent (33.34%)
21 to the local law enforcement agency having jurisdiction over
22 the adult entertainment.

23 (3) Thirty-three and thirty-three hundredths percent
24 (33.33%) to the state department of health.

25 (b) Fees collected for permits under section 28 of this chapter
26 and penalty fees collected under section 31 of this chapter shall be
27 divided as follows:

28 (1) Sixty percent (60%) to the authority having jurisdiction
29 over the adult entertainment.

30 (2) Forty percent (40%) to the state department of health.

31 SECTION 3. [EFFECTIVE JULY 1, 2001] Notwithstanding
32 IC 24-4-13, as added by this act, an adult oriented establishment
33 existing and in operation on July 1, 2001, must submit an
34 application for a license not later than December 31, 2001. If a
35 license is not approved, the existing adult oriented establishment
36 shall cease to operate.

(Reference is to SB 220 as introduced.)

and when so amended that said bill be reassigned to the Senate Committee on Governmental and Regulatory Affairs.

GARTON

Chairperson